

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FELISHATAY ALVARADO,

Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,

Defendants.

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**Civil Action
No. 22-3763**

ORDER

AND NOW, this ____ day of _____, 2024, upon consideration of ECF No. 48, Motion *in Limine* to instruct the jury that the Defendants violated Plaintiff's constitutional rights by failing to knock and announce as a matter of law filed on behalf of Plaintiff, the Response in Opposition filed on behalf of Defendants, and any response thereto, it is **HEREBY ORDERED** that the Motion is **DENIED** as follows:

1. The issue of whether Defendants violated Plaintiff's constitutional rights by entering her home without first knocking and announcing their presence is in dispute and for the jury to decide in light of the evidence admitted at trial as the trier of fact. Plaintiff's request to the Court to instruct the jury that Defendants violated Plaintiff's Constitutional rights as a matter of law by entering her home without first knocking and announcing their presence is **DENIED**.
2. The issue of whether Defendants are liable to Plaintiff for damages is in dispute and for the jury to decide in light of the evidence admitted at trial as the trier of fact. Plaintiff's request to the Court to instruct the jury that Defendants are liable to Plaintiff for all damages proximately suffered by her as a matter of law is **DENIED**.

3. The issue of whether the Defendants' actions complied with the requirements of the Knock and Announce Rule is in dispute and for the jury to decide. Preclusion of argument or suggestion by the Defendants before the jury that their actions did not violate Plaintiff's constitutional rights is **DENIED**.

BY THE COURT:

, J

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**DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION *IN LIMINE*
REGARDING THE DEFENDANTS’ FAILURE TO COMPLY
WITH THE KNOCK AND ANNOUNCE RULE BEFORE ENTERING
PLAINTIFF’S HOME (ECF NO. 48)**

Defendants, City of Philadelphia; Police Officers Joshua Burkitt, Eric Clark, Jose Hamoy, Brian Murray, Patrick Saba, and Edward Song; Sgt. Kevin Mellody; and Lt. Demetrius Monk (collectively, “Defendants”), by and through undersigned counsel, hereby respond in opposition to ECF No. 38, the motion *in limine* Regarding the Defendants’ Failure to Comply with the Knock and Announce Rule Before Entering Plaintiff’s Home filed on behalf of Plaintiff, and respectfully request the Motion be denied for the reasons set forth herein.

In Plaintiff’s motion *in limine*, she requests the Court instruct the jury that a claim in dispute – whether the Defendants violated Plaintiff’s constitutional rights by failing to knock and announce – has been proven by the Plaintiff before the issue and any evidence admitted by the Court in support or opposition thereof reaches the jury. Whether Defendants violated Plaintiff’s constitutional rights is not an adjudicative fact, or fact pertinent to this case, it is a claim at issue in this case that this Court ruled shall remain for the jury to decide. Plaintiff recognized it as an issue for the jury, and reflected on the Court’s prior ruling, in her brief in support of the motion *in limine* quoting the Court’s memorandum order, “‘The Court’s Memorandum Order that ruled upon

the Defendants' Motion for Summary Judgment held that Plaintiff's Fourth Amendment claims against the individual SWAT officers may proceed to trial on three theories: "(1) that they unlawfully breached and entered her apartment by unreasonable mistake, (2) that they unlawfully failed to knock and announce before doing so, and (3) that they unlawfully detained her after realizing they were in the wrong unit." See the Court's Memorandum Order, dated, February 27, 2024, at 1.'" Defendants agree whether the Defendants unlawfully failed to knock and announce before entering Plaintiff's apartment is an issue that remains to be tried and decided by the jury, the trier of fact. Whether Defendants failed to knock and announce at all is at issue and central to Plaintiff's case and Defendants' defense. Therefore, any instruction to the jury that a violation of Plaintiff's constitutional rights occurred and damages have been proven as a matter of law would unfairly prejudice Defendants and usurp the jury's role as the trier of fact. Preclusion by Defendants from presenting argument or suggestions that they are not liable for one of three claims Plaintiff is asserting against them is similarly unfairly prejudicial to Defendants.

For the reasons set forth herein, Defendants respectfully request that this Honorable Court deny ECF No. 48.

Date: September 5, 2024

Respectfully submitted,

/s/ Jonah Santiago-Pagán
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CERTIFICATE OF SERVICE

I, Jonah Santiago-Pagán, Esquire, Counsel for the Defendants in the above-captioned matter, hereby certify that the foregoing Defendants' Response in Opposition to Plaintiff's Motion in *Limine* ECF No. 48, proposed form of order, and this certificate of service were filed via the Court's ECF system and are available for viewing and downloading.

Date: September 5, 2024

Respectfully submitted,

/s/ Jonah Santiago-Pagán

JONAH SANTIAGO-PAGAN, ESQUIRE

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